

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ameritec Corporation

Serial No. 74/570,031

Edward O. Ansell for Ameritec Corporation

Michael A. Szoke, Trademark Examining Attorney, Law Office
103 (Kathryn D. Erskine, Managing Attorney)

Before Simms, Seeherman and Walters, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Ameritec Corporation has appealed from the Trademark Examining Attorney's final refusal to register NIAGARA as a trademark for "telecommunications call generators and simulators."¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, as used on its identified

¹ Application Serial No. 74/570,031, filed September 6, 1994, and asserting first use and first use in commerce as early as March 26, 1992.

goods, is likely to cause confusion with the mark NIAGARA, registered for "electrical transformers."²


The case has been fully briefed;³ an oral hearing was not requested.

Essentially it is the Examining Attorney's position that the marks are identical and that "electrical transformers" may be used in telephony and telecommunications applications. As a result, the Examining Attorney asserts that the transformers identified in the cited registration are likely to be sold to the same equipment manufacturers and engineers who purchase applicant's equipment. In support of this position, the Examining Attorney has made of record catalog evidence which shows that transformers are used in the telephony and communications fields. For example, a listing for Altran Corp. advertises "Quality Magnetic Components for ...Telephony," and states "Power transformers and associated filtering magnetics can be readily produced to precise performance levels." An advertisement for APX Technologies

² Registration No. 604,430, issued April 12, 1955; renewed twice.

³ The Examining Attorney has, in his brief, objected to certain third-party registrations submitted by applicant because they were obtained from a private company's data base, rather than from the records of the Patent and Trademark Office. This objection is not well taken. Applicant submitted these registrations during the prosecution of its application, and the Examining Attorney did not advise applicant at that time, when the problem could have been corrected, that there was any problem with the submission. In these circumstances, we think the Examining Attorney has waived his right to object. Further, there is no indication that the registrations submitted by applicant are inaccurate.

Inc. is headed "Communications Transformers, Inductors & Specialized Magnetic Products," pictures "coupling transformers" refers to "Fly Back Transformers," and states "We are transformer and magnetics specialists!" Microtran advertises "telephone interconnect transformers," while Valor lists "pulse transformers and common mode chokes for data communications and telecommunications applications."

Applicant, on the other hand, argues that its goods are very different from the registrant's. According to the declaration of Mark Henderson, applicant's Vice President-Simulator Group, its NIAGARA products are "load testing and bulk call generation equipment, that is, telecommunications simulator test equipment." It can be used for testing switching systems, and such applications as load testing, traffic generation, traffic route testing, call feature testing, call completion analysis and complex call testing. The customers for applicant's products are for the most part manufacturers of telecommunications systems, but may also include providers and users of telecommunications services. Henderson declaration,  4. In the United States applicant "interfaces with its customers directly through its sales force, order entry personnel and its technical applications group." The persons making the buying decisions are invariably engineers by education and/or experience.

According to the declaration of Bertrand Dubois, applicant's Manager of Purchasing, a telecommunications call

generator "is usually purchased by an institution of such size that purchasing practices have interlocking levels of responsibility, i.e., engineering personnel familiar with the general type of equipment desired prepare detailed requirements, and purchasing personnel seek vendors offering products meeting such requirements." Purchasing personnel would, after receipt of a requirement, review catalogs and buying guides and, where indicated, would consult with the party who authored the requirements.

As for registrant's goods, applicant asserts that they are heavy duty power transformers which are estimated to cost in the five-figure range. Applicant points to promotional literature of the registrant, which it has made of record, which states that registrant, in addition to manufacturing standard power and distribution transformers, "also manufacture[s] arc furnace, induction furnace, hazardous duty, rectifier duty, motor drive duty, traction duty, PCB retrofit, padmount, unit substation, autotransformer, motor starting autotransformer and water cooled liquid filled transformers." Applicant also asserts, based on statements made in the registrant's literature, that registrant's customers include universities, OEM's, [original equipment manufacturers] utilities, armed forces and government agencies.

Thus, it is applicant's position that the registrant's electrical transformers are different from the very inexpensive and small transformers used in call generators.

As the Examining Attorney correctly notes, the question of likelihood of confusion must be determined on the basis of the identification of goods set forth in the subject application and cited registration. **In re William Hodges & Co., Inc.**, 190 USPQ 47 (TTAB 1976). Thus, whatever the particular properties applicant asserts the registrant's electrical transformers actually do have, we must consider the registration to encompass all electrical transformers, including electrical transformers which are used in communications applications.

Having said this, however, we do not find that the Examining Attorney has demonstrated that the relevant consumers are likely to believe that telecommunications call generators and simulators and electrical transformers emanate from the same source, even if they are sold under the identical trademark NIAGARA. As applicant has pointed out, there are 148 different categories of transformers. Transformers are relatively ubiquitous items for electronic equipment, being "a device employing electromagnetic induction to transfer electrical energy from one circuit to another, i.e., without direct connection between them."⁴ The mere fact that transformers may be used in applicant's equipment, or may be purchased by the same manufacturers of

⁴ S. Gibilisco, The Illustrated Dictionary of Electronics, 6th ed. © 1994. The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), *aff'd*. 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

telecommunications systems that purchase applicant's equipment, is not enough for us to conclude that applicant's goods are sufficiently related to the goods identified in the cited registration to support a finding of likelihood of confusion. See **Hewlett-Packard Co. v. Human Performance Measurement Inc.**, 23 USPQ2d 1390 (TTAB 1991) (the fact that both parties share a common channel of trade does not necessarily mandate a finding that the products are related and that confusion is likely).

There is no evidence to show that manufacturers of telecommunications call generators and simulators manufacture or sell electrical transformers, or vice versa, let alone evidence that companies would sell such goods under the same mark. Moreover, applicant has shown that the kinds of electrical transformers used in connection with applicant's identified goods, i.e., transformers used in communications equipment, are minor, inexpensive items that are, in effect, incidental to the purposes of the equipment.

The purchase of telecommunications call generators and simulators is necessarily undertaken with great care. Applicant has shown that its goods are sold via direct contact between its personnel and the purchaser. Applicant has also shown that the purchasing decisions for such goods are made by engineering personnel who are familiar with the equipment. Such purchasers are not likely to think that all items which may be used in communications systems will come from the same source, even if they are sold under the same

mark. Rather, these sophisticated purchasers will know what kinds of equipment a particular manufacturer is likely to produce; if it is not usual in the trade for a maker of telecommunications call generators and simulators to also make transformers (and, again, there is no evidence of record that any do), these purchasers are not likely to assume that applicant's telecommunications equipment and the registrant's transformers emanate from the same source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993) (manufacturers, wholesalers, and retailers are knowledgeable about the products in the field and the sources thereof, and therefore the likelihood that they would be confused by the use of the identical marks of applicant and registrant on the differing goods involved is much less than would be the case if both marks were encountered by the general public).

Having considered all of the relevant duPont factors, we find that the evidence of record is insufficient to prove that applicant's use of NIAGARA for telecommunications call generators and simulators is likely to cause confusion with the mark NIAGARA, registered for electrical transformers.

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Decision: The refusal of registration is reversed.

R. L. Simms

E. J. Seeherman

C. E. Walters
Administrative Trademark Judges
Trademark Trial and Appeal Board